

# SENATE BILL REPORT

## SB 6631

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As of January 31, 2008

**Title:** An act relating to adopting the life settlements model act.

**Brief Description:** Adopting the life settlements model act.

**Sponsors:** Senators Berkey, Benton, Marr and Roach.

**Brief History:**

**Committee Activity:** Financial Institutions & Insurance: 1/30/08.

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### SENATE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

**Staff:** Diane Smith (786-7410)

**Background:** The term, life settlements, involves selling a life insurance policy that is no longer wanted or needed to a third party, other than the insurance company that issued the policy. Typically, the seller receives more than the policy's cash surrender value but less than its net death benefit.

Generally, the purchasers of life insurance policies are institutions called, life settlement companies, or life settlement providers. They may hold the policies until maturity, when the insured person dies, and collect the net death benefits. They may also resell the policies, or they may sell interests in multiple policies to hedge funds or other investors. The person selling his or her policy receives a lump sum payment. The amount of the lump sum varies depending on a range of factors including the person's age, health, and terms and conditions of the life insurance policy. The purchaser agrees to pay any additional premiums required to keep the policy in effect and receives the death benefit when the person dies.

The Office of Insurance Commissioner (OIC) administers the Insurance Code. That code governs all insurance and insurance transactions; however, there is no specific regulatory authority for the OIC to administer the business of life settlements.

**Summary of Bill:** A life settlement contract is a written agreement between the policy owner and the third party, called the provider, that pays the owner less than the death benefit of the insurance policy in return for the policy owner's transfer of the death benefit to the provider. The minimum value of a life settlement contract must be greater than the cash surrender value of the policy or accelerated death benefit available at the time of application for the life settlement contract.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Initiating a life insurance policy for the benefit of an investor who has no insurable interest in the insured is called stranger-originated life insurance.

A system of licensing providers and brokers of life settlement contracts is established under the authority of the OIC. The fee for and term of the license are established by the OIC. The OIC must investigate each applicant to determine that the applicant meets the requirements for licensure, including the provision of an antifraud plan to the OIC; that the applicant is competent and trustworthy and intends to transact its business in good faith; has a good business reputation; and has the education or experience to be qualified to transact the life settlements business. Life settlement brokers must complete continuing education in life settlements in the amount of 15 hours every two years, unless the broker is a life insurance producer.

The OIC conducts examination of licensees with the contents of the investigation being confidential by law and privileged. The costs of the examination are borne by the licensee.

The OIC may revoke, suspend, or refuse to renew a license if the provider has entered into any life settlement contract that the OIC has not approved, among other reasons. Before it takes any of these actions the OIC must conduct an administrative hearing.

No life settlement contract or form, including the disclosure form, may be used unless it is approved by the OIC for compliance with general rules, advertising requirements, and disclosure requirements, among other requirements.

Policies settled within five years of issuance must be reported to the OIC in an annual statement. Providers who willfully fail to file this annual statement are subject to penalties of up to \$250 per day of delay, not to exceed \$25,000 in the aggregate for each failure.

Provisions protect the insured's identity and financial and medical information.

With exceptions, entering into a life settlement contract within two years of the date of issuance of the life insurance policy is prohibited. Before executing a life settlement contract, those having a terminal illness must acknowledge that the illness was diagnosed after the life insurance policy was issued. A terminal illness is one in which death is expected within two years.

Advertising about life settlement contracts must be filed with the OIC. No advertising may expressly reference that the insurance is "free" for any period of time. Promoting the purchase of an insurance policy for the purpose of settling the policy is unlawful. A loan, secured by an interest in the life insurance policy that the premiums of which policy the loan is designed to finance, is unlawful if the proceeds are in addition to the amount required to pay the principal, interest and service charges of the policy's premiums. If the loan provides funds which can be used for purposes other than paying the premiums of the life insurance policy and the loan itself, the application must be rejected.

The disclosure document must contain specified language, be a separate page, signed by both the owner and provider, and given to the owner no later than the date the contract is signed by all parties.

The OIC has rule making authority. The laws of the state that apply to the owner take precedence if there is a conflict.

**Appropriation:** None.

**Fiscal Note:** Requested on January 24, 2008.

[OFM requested ten-year cost projection pursuant to I-960.]

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: This is the NCOIL model bill. While supporting the ACLI model in more respects, we are solidly behind the language of the bill as before the committee. STOLI is morally and legally wrong, turning insurable interest upside down. Insurable interest has been a necessary legal requirement since the 17th century. The crux of the concept is that when strangers own an interest in the life of someone they do not rely on for support, that interest is more valuable to the stranger the sooner the person dies. STOLI is growing exponentially and is no longer just marketed to the wealthy. There can be grave privacy risks, tax consequences, and costs. Agents can be paid very enormous commissions to get these policies into the secondary market. Congress has looked into it. The bill goes a long way to address abuses while still allowing life settlements for valid purposes, such as seniors needing current money for provision of help to relatives. While willing to work with the OIC on drafting, the watering down of consumer protections is opposed. Changes to ensure consistency within the bill and increased transparency for the consumer are supported. Bills like this are pending in 15 other states, with one enacted in North Dakota.

OTHER: This bill is the unchanged NCOIL model and does not align well with Washington processes. It is ambiguous with lengthy, contradictory definitions. There have been no consumer complaints. A minor amendment where the bill overlaps with Washington's securities laws is requested. This NCOIL model was just finalized in November 2007. Work needs to be done on a few things. Ninety percent of life insurance policies do not ever pay a claim. Forty percent lapse in the first five years. Life insurance policies have been legally recognized as property that the owner has a right to sell since 1931. There is a true asset value to these policies that is three to five times the cash surrender value that life insurance companies will offer. Depriving the owners of these policies of a market for exchanging the policies for their true asset value is not in the owners' best interests. This market would not exist if insurance carriers gave their policy-holders the true cash value of their un-needed and unwanted policies. STOLI is a big negative. Yes, add consumer protections. Also add protections for the consumer to be allowed by the policy itself to have their policy appraised and to sell the policy for its true value.

**Persons Testifying:** PRO: Mel Sorensen, ACLI/NAIFA; John Mangan, ACLI; Tom Brooks, ILMA.

OTHER: Carol Sureau, Office of Insurance Commissioner; Mike Stevenson, Department of Financial Institutions; Carrie Tellefson, Coventry; Michael Freedman, Coventry.